

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

78-0248

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78-0248/A-D
FOIA Mondale

1 MAR 1978

The Honorable Thomas P. O'Neill
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Submitted herewith, pursuant to the provisions of 5 U.S.C. 552(d), is the report of the Central Intelligence Agency concerning its administration of the Freedom of Information Act during calendar year 1977.

During 1977, 4,843 requests for access to records were logged and put into processing by the Agency, of which 1,252 were submitted under the Freedom of Information Act. An additional 1,190 request letters were received during the year but not formally processed pending receipt of additional information from the requesters. These were, without exception, requests for access to personal records, which, under the Agency's regulations, are usually processed under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) rather than the Freedom of Information Act. A summary of Agency activity including Privacy Act and Executive Order 11652 mandatory classification review requests as well as Freedom of Information requests, is provided in the statistical table below. You will note that the processing backlog increased by 1,138 cases during 1977.

	<u>FOIA</u>	<u>PA</u>	<u>EO</u>
1. Requests carried over from CY 1976	536	598	98
2. Requests logged during CY 1977	1,252	3,023	568
3. Total requests closed during CY 1977	772	2,397	536

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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

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1 MAR 1978

FOIA

The Honorable Walter F. Mondale
President of the Senate
Washington, DC 20510

Dear Mr. President:

Submitted herewith, pursuant to the provisions of 5 U.S.C. 552(d), is the report of the Central Intelligence Agency concerning its administration of the Freedom of Information Act during calendar year 1977.

During 1977, 4,843 requests for access to records were logged and put into processing by the Agency, of which 1,252 were submitted under the Freedom of Information Act. An additional 1,190 request letters were received during the year but not formally processed pending receipt of additional information from the requesters. These were, without exception, requests for access to personal records, which, under the Agency's regulations, are usually processed under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) rather than the Freedom of Information Act. A summary of Agency activity, including Privacy Act and Executive Order 11652 mandatory classification review requests as well as Freedom of Information requests, is provided in the statistical table below. You will note that the processing backlog increased by 1,138 cases during 1977.

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a. Granted in full	167	195	156
b. Granted in part	241	520	268
c. Denied in full	95	124	101
d. No record available and misc. (e.g., canceled or with- drawn)	269	1,558	11
4. Requests carried over to CY 1978	1,016	1,224	130

In addition to the above, the Agency responded during 1977 to numerous other requests from members of the public for copies of unclassified CIA publications such as maps, reference aids, monographs, and translations of foreign language broadcasts and press items--either directly or by referral to those federal agencies with responsibility for the distribution of such CIA products.

The number of formal requests levied upon the Agency increased by 38.7 percent (1,352 requests) over the previous year. Freedom of Information requests during 1977 showed an increase of 64.5 percent (491) over 1976. In order to handle this workload, manpower equivalent to 109 employees working full-time was assigned to the processing of Freedom of Information and related requests, appeals, and litigation--an increase of some 5.9 percent over the manpower allocation of 1976. Despite our increased efforts, however, the processing backlog grew.

I have explained in previous reports the factors which make the processing of Freedom of Information and similar requests a time-consuming matter for the Agency. These factors include a decentralized filing system, a frequent need for intra- or interagency coordination in the review of records, and the extreme sensitivity of many of our records. Except for those rare instances when Freedom of Information requests happen to duplicate those previously processed, it has been impossible for the Agency to respond within the 10 working days stipulated by the Act, or, for that matter, within the 20 working days permitted by the Act whenever certain conditions are met. We follow a general policy of "first-in, first-processed" in handling requests, and our processing backlog is such that the statutory deadline for responding usually has elapsed prior to our commencing work on requests. The situation in responding to appeals in a timely manner is, if anything, even worse.

There is no other intelligence organization in the world which is under such a broad legal requirement to provide

intelligence information to the general public. Nonetheless, I assure you that the Agency has made, and continues to make, every effort to comply fully with both the letter and spirit of the Freedom of Information Act, consistent with the Director's statutory mandate to protect intelligence sources and methods from unauthorized disclosure. To this end, a sizable commitment of resources has been allocated to the administration of the Act. In my judgment, the Agency cannot divert much additional manpower to the program without impairing its ability to perform basic foreign intelligence missions. Moreover, there is a limit to the number of personnel qualified to review for releasability sensitive intelligence records. Mistakes would be costly. Unless our sources are afforded protection from disclosure, they could lose confidence in our ability to maintain secrets and back off from full collaboration, thereby impairing the Agency's ability to collect the intelligence essential to national survival. In view of these considerations, we urge that the Congress consider amending the Act so that the time constraints are reasonable and that both the volume of records and their possible sensitivity with respect to national security matters are duly taken into account.

I feel obliged to bring to your attention the fact that, although the Act does not directly apply to the Congress, Congressional documents and Congressional information recorded in CIA memoranda, provided to the CIA under clear caveats of confidentiality, are subject to requests. Under the Act, the CIA must acknowledge the existence of such documents and memoranda to the requester; we have, however, respected the confidentiality imposed by the Congress. The Agency is now involved in litigation wherein the plaintiff is seeking disclosure of the Executive Session transcript of the House Committee legislative hearings on the National Security Act of 1947, which established the Central Intelligence Agency.

Respectfully,

/s/ John F. Blake

John F. Blake
Deputy Director
for
Administration

Enclosure

25X1

IPS/[] 22 February 1978

Distribution:

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 - 1 - O/DCI/FOIO (w/Report)

FREEDOM OF INFORMATION ACT

ANNUAL REPORT TO THE CONGRESS FOR THE YEAR 1977

1. Total number of initial determinations not to comply with a request for records made under subsection 552(a): 336

2. Authority relied upon for each such determination:

(a) Exemptions in 552(b):

<u>Exemption invoked</u>	<u>Number of times (i.e., requests) invoked</u>
(b) (1)	234
(b) (2)	54
(b) (3)	284
(b) (4)	3
(b) (5)	21
(b) (6)	146
(b) (7)	25
(b) (8)	0
(b) (9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e., requests) invoked</u>
50 U.S.C. 403(d)(3) and/or 50 U.S.C. 403g	284

(c) Other authority: None

In 13 instances, requesters appealed on the basis of our failure to respond within the statutory deadline, and initial processing was therefore halted prior to completion. Seven requests were withdrawn by the requesters after processing had commenced. Finally, 83 requests were canceled because of the failure of requesters to respond to letters asking for clarification, additional identifying information, notarized releases from third parties, fee deposits or written assurances that fees would be paid, etc. We do not regard any of the above actions as denials inasmuch as the Agency was prepared to act upon the requests, and they have thus not been included in in the 336 figure given in answer to question 1, above.

- Approved For Release 2005/01/06 : CIA-RDP81M00980R000200010025-2
3. Names and titles of each person who is responsible for the denial of records requested and the number of instances of participation of each:

<u>Name</u>	<u>Title</u>	<u>No. of instances of participation</u>
	Former Assistant for Information, DDA	9
	Chief of the Information Review Group, Office of Security	9
	Director of Medical Services	1
	Director of Technical Service	8
	Former DDO Information Review Officer	141
	Assistant Legislative Counsel	1
	Deputy Director of Geographic and Cartographic Research	1
	Deputy Director of Regional and Political Analysis	5
	Deputy Director for Science and Technology	1
	Former Chief of the Information Review Group, Office of Security	35
	Director of Research and Development	2
	Director of Central Reference	4
Director of Economic Research	3	

Executive Secretary, Office of the DCI	1
Director of the Office of Imagery Analysis	2
Director of the Nation- al Photographic In- terpretation Center	3
Director of Personnel	6
Former Director of Security	1
Former Chief of the Plans and Resources Staff, Office of Training	1
Deputy Director of Security for Policy and Management	3
Former Deputy Director of Regional and Politi- cal Analysis	1
General Counsel	8
Former Deputy to the DCI for National Intelligence	1
Director of Logistics	2
Former Deputy Director of Economic Research	9
DDO Information Re- view Officer	29
Deputy Director of Logistics	1
Chief of the Policy and Coordination Staff, DDO	3

25X1

Deputy Director of Scientific Intelligence	3
Deputy Director of Training	1
Former Deputy Director for Intelligence	1
Former Special Assistant to the Deputy to the DCI - Intelligence Community	3
Deputy Director of Strategic Research	2
Inspector General	1
Director of Scientific Intelligence	1
Former Deputy Director for Operations	2
Information and Privacy Coordinator	4

It will be noted that the total number of instances of participation amounts to only 313, some 23 less than the number of requests denied in whole or in part. The explanation for this is that a number of requests concerned other agencies' records, referred to the CIA for review. Following the review, these records were returned to the originator, along with the CIA's determinations and recommendations, for the originating agency's response to the requester. Under these circumstances, no CIA denying official was identified inasmuch as the records were denied to the requester by the agency which originated them.

4. Total number of intra-agency appeals from adverse initial decisions made pursuant to subsection (a)(6): 63

The above figure does not include 13 appeals resulting from the Agency's failure to respond within the statutory deadline. In 22 additional cases, requests which were initially processed under the provisions of the Privacy Act were processed under the Freedom of Information Act, upon appeal, in accord with the wishes of the appellants.

- (a) Number of appeals in which, upon review, request for information was granted in full: 1
- (b) Number of appeals in which, upon review, request for information was denied in full: 17
- (c) Number of appeals in which, upon review, request was denied in part: 65

5. Authority relied upon for each such appeal determination:

(a) Exemptions in 552(b):

<u>Exemption invoked</u>	<u>Number of times (i.e., appeals) invoked</u>
(b)(1)	68
(b)(2)	21
(b)(3)	73
(b)(4)	0
(b)(5)	10
(b)(6)	56
(b)(7)	38
(b)(8)	0
(b)(9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e., appeals) invoked</u>
50 U.S.C. 403(d)(3) and/or 50 U.S.C. 403g	73

6. Names and titles of each person who, on appeal, is responsible for the denial in whole or in part of records requested and the number of instances of participation of each:

<u>Name</u>	<u>Title</u>	<u>No. of instances of participation</u>
Blake, John F.	Deputy Director for Administration	20
Dirks, Leslie C.	Deputy Director for Science and Technology	3
Malanick, Michael J.	Former Acting Deputy Director for Administration	19

	Former Deputy to the DCI for the Intelligence Community	1
Stevens, Sayre	Deputy Director of the National Foreign Assessment Center	2
Wells, William W.	Former Deputy Director for Operations	75

7. Provide a copy of each court opinion or order giving rise to a proceeding under subsection (a)(4)(F); etc.: None
8. Provide an up-to-date copy of all rules or regulations issued pursuant to or in implementation of the Freedom of Information Act (5 U.S.C. 552):

See Tab A for amendments published in 1977.

9. Provide separately a copy of the fee schedule adopted and the total dollar amount of fees collected for making records available:

See Tab B for a copy of the fee schedule.

The total amount collected and transmitted for deposit in the U.S. Treasury during 1977 was \$16,439.

10. A. Availability of records:

As the CIA does not promulgate materials as described in 5 U.S.C. 552(a)(2)(A)-(C), no new categories have been published.

In the case of each request made pursuant to the Freedom of Information Act, all reasonably segregable portions of records are released.

B. Costs:

During calendar year 1977, the Agency expended 192,800 man-hours (the equivalent of approximately 109 man-years) in processing Freedom of Information and related (i.e., Privacy Act and Executive Order 11652) requests, appeals, and litigation. This represents a 5.9 percent increase over the previous year. Calculated on the basis of an average clerical grade of GS-06/Step 3, and an average professional grade of GS-12/Step 5, the total salary expenditures for the year amounted to approximately \$2,161,600. Taking into account fringe benefits such as Government contributions to insurance, hospitalization, and

retirement programs, we estimate the total personnel costs at \$2,377,700. Of this total, approximately \$1,021,250 can be attributed to administration of the Freedom of Information Act.

Such additional costs as office space, equipment rentals, office supplies, EDP support, etc., have not been calculated. It is thought, however, that these expenditures would be relatively minor in comparison with the personnel costs estimated above.

C. Compliance with time limitations for agency determinations:

- (I) Provide the total number of instances in which it was necessary to seek a 10-day extension of time: None

The Agency's processing backlogs have been such that in almost all instances the deadlines for responding to requests and appeals expired prior to our actually working on them. We were not in a position, for that reason, to assert that any of the three conditions upon which an extension must be based existed. We have therefore explained the problem to requesters and appellants and apprised them of their rights under the law.

- (II) Provide the total number of instances where court appeals were taken on the basis of exhaustion of administrative procedures because the agency was unable to comply with the request within the applicable time limits: 13

- (III) Provide the total number of instances in which a court allowed additional time upon a showing of exceptional circumstances, together with a copy of each court opinion or order containing such an extension of time: 1

See Tab C for a copy of the court order.

D. Internal Memoranda:

A copy of [] "Freedom of Information Act, Privacy Act, and Executive Order 11652 Handbook," is enclosed as Tab D.

CHAPTER XIX—CENTRAL INTELLIGENCE AGENCY PART 1900—PUBLIC ACCESS TO DOCUMENTS AND RECORDS AND DECLASSIFICATION REQUESTS

Freedom of Information

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

SUMMARY: This rule amends CIA regulations governing access to records under the Freedom of Information Act by clarifying and updating the term "records" so that it includes machine readable materials and those documents and records furnished by other agencies, foreign governments, or international organizations and held by the CIA. Also, under this rule, a request under the Act for documents or records originated by CIA, which is referred to CIA by another agency, shall be considered a Freedom of Information request to the CIA. It will be processed in accordance with CIA regulations, as of the time that it is received by CIA, and CIA will respond directly to the requester, making it unnecessary for a requester to submit requests to both agencies. Similarly, a request directed to CIA that concerns documents or records originated by another agency will be transferred by CIA to the originating agency for their determination and direct response to the requester.

EFFECTIVE DATE: May 12, 1977.

FOR FURTHER INFORMATION CONTACT:

Gene F. Wilson, Information and Privacy Coordinator, Central Intelligence Agency, Washington, D.C. 20505, 703-351-7488.

SUPPLEMENTARY INFORMATION: Interested persons have been afforded an opportunity to participate in the making of these amendments by a notice of proposed rulemaking issued February 3, 1977 and published in the *Federal Register*, Vol. 42, No. 28, on February 10, 1977. No comments were received in response to the notice. These amendments are the same as those published in the notice.

Accordingly, 32 CFR Part 1900 is amended as follows:

§ 1900.3 [Amended]

1. In § 1900.3 paragraph (g) is amended by inserting the words "machine readable materials" between the word "photographs" and the words "and other documentary materials" and by deleting paragraphs (4) and (5).

2. Section 1900.11 is amended by revising paragraph (d) to read as follows:

§ 1900.11 Freedom of information communications; requirements as to form.

(d) Any request or communication to an agency other than the Central In-

teelligence Agency which requests or concerns documents or records originated by the CIA, and which is transferred by the CIA, shall be considered a Freedom of Information request to the CIA for that referred document as of date of receipt by the CIA of the referral, and shall be processed pursuant to regulations, CIA will respond directly to the requester.

3. In § 1900.43 a new paragraph (c) is added to read as follows:

§ 1900.43 Reviewing records.

(c) In the event located records are determined to have originated with another government agency, the Coordinator shall notify the requester of such fact and shall expeditiously forward such records or a description thereof to the originating agency for their determination and direct response to the requester.

Dated: April 30, 1977.

James P. Blum, Jr.
Deputy Director for Administration,
Central Intelligence Agency.

[FR Doc. 77-13313 Filed 5-11-77; 8:55 am]

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

[ER 1155-2-18]

PART 209—ADMINISTRATIVE PROCEDURES

Reimbursement for Advance Non-Federal Participation in Civil Works Projects

AGENCY: Office of the Chief of Engineers, Department of the Army.

ACTION: Final rule.

SUMMARY: This regulation establishes general policies, outlines procedures to be followed in reaching an agreement with an eligible non-Federal entity, and provides guidance on the provisions of such an agreement for reimbursement of advance non-Federal participation in Civil Works projects. These instructions will implement the provisions of Section 215 of the Flood Control Act of 1968. These requirements are intended to improve and expedite action resulting from non-Federal requests.

EFFECTIVE DATE: May 10, 1977.

FOR FURTHER INFORMATION CONTACT:

Richard J. Rusnack, Construction-Operations Division, Civil Works Directorate, Office of the Chief of Engineers, Washington, D.C. 20314, 202-693-6909.

SUPPLEMENTARY INFORMATION: Since this regulation only provides procedural guidance to Corps of Engineers field personnel on the implementation of Public Law 90-463, notice of proposed rulemaking and the procedures thereto are considered unnecessary.

quarter in which the certificate is actually or deemed filed, may be paid in quarterly installments over an appropriate period of time, as determined by the district director. In determining the appropriate period of time, the district director shall exercise forbearance and, to the extent possible, grant the organization an installment agreement that will allow it sufficient funds to carry out its basic mission. If any installment is not paid on or before the date fixed for its payment, the total unpaid amount shall become payable immediately and shall be paid upon notice and demand.

(c) **Application of certain provisions to cases of constructive filing.** (1) Except as provided in subparagraphs (2) and (3) of this paragraph, all of the provisions of section 3121(k) (other than subparagraphs (B), (F), and (H) of section 3121(k)(1) and the regulations thereunder (including the provisions requiring the payment of taxes under sections 3101 and 3111 with respect to the services involved), shall apply with respect to any certificate which is deemed to have been filed under paragraph (a) or (b) of this section, in the same way they would apply if the certificate had been actually filed on that day under section 3121(k)(1).

(2) The provisions of section 3121(k)(1)(B) shall not apply unless the taxes described in paragraph (a)(1)(III) of this section were paid by the organization as though a separate certificate had been filed with respect to one or both of the groups to which such provisions relate.

(3) The action of the organization in obtaining the refund or credit described in paragraph (b)(1) of this section shall not be considered a termination of such organization's coverage period for purposes of section 3121(k)(3).

(4) Any organization which is deemed to have filed a waiver certificate under paragraph (a) or (b) of this section shall be considered for purposes of section 3102(b) to have been required to deduct the taxes imposed by section 3101 with respect to the services involved.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Section 7805 of the Internal Revenue Code of 1954 (88A Stat. 917; 26 U.S.C. 7805).)

JOHN L. WITHERS,
Acting Commissioner
of Internal Revenue.

Approved: May 6, 1977.

LAURENCE N. WOODWORTH,
Assistant Secretary of the
Treasury.

[FR Doc. 77-13500 Filed 5-9-77; 10:03 am]

Fees for Records Services

(a) Search and duplication fees shall be charged according to the schedule set out in paragraph (c) of this section for services rendered in responding to requests for Agency records under this part. Records shall be furnished without charge or at a reduced rate whenever the Coordinator determines that waiver or reduction of the charge is in the public interest because furnishing the information can be considered as primarily benefiting the general public. The Coordinator also may waive or reduce the charge whenever he determines that the interest of the government would be served thereby. Fees shall not be charged where they would amount, in the aggregate, for a request, or a series of related requests, to less than \$4.

(b) Where it is anticipated that the fees chargeable under this section will amount to more than \$25, and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the requester shall be promptly notified of the amount of the anticipated fee or of such portion thereof as can readily be estimated. In appropriate cases an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the requester to confer with the Coordinator in an attempt to revise the request in a manner which will reduce the fees and meet the needs of the requester. Dispatch of such a notice or request shall suspend the running of the period for response by the Agency until a reply is received from the requester.

(c) The schedule of fees for services performed in responding to requests for Agency records is established as follows:

(1) For each one quarter hour spent by clerical personnel in searching for a record, \$1;

(2) For each one quarter hour spent by professional personnel in searching for a record, \$2;

(3) For computer search, \$55;

(4) For copies of paper documents in sizes not larger than 8 1/2 x 14 inches, \$0.10 per copy of each page; and

(5) For duplication of non-paper media or any document that cannot be reproduced on a standard office cop

FOR THE DISTRICT OF COLUMBIA

Approved For Release 2005/01/06 : CIA-RDP81M00980R000200010025-2

SERBIAN EASTERN ORTHODOX DIOCESE FOR THE
UNITED STATES OF AMERICA AND CANADA,
et al.,

Plaintiffs,

v.

CENTRAL INTELLIGENCE AGENCY, et al.,

Defendants.

Civil Action Number

77-1412

FILED

DEC - 11 - 77

O R D E R

Upon consideration of defendants' Motion for an Enlargement of Time, the entire record herein, the Court being fully advised of the premises, it is this 7th day of December, 1977,

ORDERED that defendants' motion be, and the same hereby is, granted; and it is

FURTHER ORDERED that defendants may have to and including January 16, 1978 within which to file their dispositive motion with supporting affidavits.

J. N. Pate
UNITED STATES DISTRICT JUDGE

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Approved For Release 2005/01/06 : CIA-RDP81M00980R000200010025-2

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Annual FOIA Report to the Congress for Calendar Year 1977

FROM:

IPS/DDA, 2E42

EXTENSION

NO.

OLC-78-0248

DATE

1 March 1978

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. AI/DDA, 7D02

3/1

BJ

1: information

3: signature

2.

3. DDA, 7D24

3 MAR 1978

3

This report and its transmittal letter were coordinated with

OGC

OGC called

an oversight to our attention, and it was corrected. OLC proposed several changes in the text of the transmittal letter, some of which were accepted. For example, the last paragraph of the transmittal letter was added upon the strong recommendation of OLC.

7.

8.

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14.

15.

In previous years, these reports were delivered to the Congress by OLC. If you will send the signed and dated originals to

he will make the necessary arrangements.

Approved For Release 2005/01/06 : CIA-RDP81M00980R000200010025-2

FORM 3-62

610

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